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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/484,610 | 01/18/2000 | Guenter E. Roeck | CISCP123/1688 | 9891 |

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| EXAMINER |
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SLOAN, NATHAN A

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| ART UNIT | PAPER NUMBER |
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2614

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DATE MAILED: 09/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/484,610

Applicant(s)

ROECK ET AL.

Examiner

Nathan A Sloan

Art Unit

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Advisory Action

1. Applicant's arguments filed 8/15/03 have been fully considered but they are not persuasive.

With respect to independent claims 1, 11, 16, 24, 27, and 32, applicant presents several arguments regarding the application of Leano (6,453,472) in view of Kumar (6,212,399).

First, examiner notes that applicant concedes "the Leano reference discusses most elements of the independent claims" and further that it is true "*that the wireless terminal described in the Leano patent can be modified to analyze a plurality of power measurements as opposed to merely analyzing power control signals as described by Kumar.*" It is thus clear that (a) Leano teaches most elements of the present independent claims, (b) Kumar is a combinable reference, and (c) it is an obvious modification to analyze a plurality measurements rather than power control signals. Correspondingly, subsequent arguments by applicant regarding the difference between Kumar's power control signals and the presently claims power measurements are deemed moot. Moreover, as has been previously noted, Leano explicitly teaches calculating a power adjustment based on a power measurement.

With regard to claim 24, the fact that Kumar's power control signals are different from frequency measurements is noted by applicant. However, claim 24 was rejected under 103 based on Leano in view of Kumar and Official Notice regarding frequency selection via a plurality of measurements selected during ranging, which is now taken as admitted prior art.

Applicant's arguments regarding claim 16 have been previously responded to as not being a patentable distinction. Applicant has simple restated these arguments and examiner

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correspondingly upholds the previous determination that claim 16 is not patentably distinct from Leano in view of Kumar.

Claims 36-42 are correspondingly met as noted in response to previously discussed independent claims.

Examiner feels that all of the elements in the presently claimed invention have been met as pointed out in prior actions and above; therefore, attention is turned to the issue of motivation to combine the references.

Applicant states throughout the response filed 8/15/03 that "the prior art fails to provide motivation to combine the teachings of these two references in a manner that suggests the claimed invention." On page 3, applicant states that examiners combining reason of "avoiding large, instantaneous fluctuations in power signals" is derived using hindsight from the present application. Examiner notes that this motivation is not replied upon in the art rejections. Examiner was merely restating the motivation explicitly provided by Kumar in response to applicant's previous arguments. Specifically, examiner cited column 7, lines 8-11 of Kumar as motivation under 103 to combine Leano in view of Kumar in order to "prevent unnecessarily wild fluctuations in radiated power." It is thus clear that Kumar provides motivation for utilizing a plurality of recent data samples to control power. Applicant states that object of Kumar is to address "quality of the signal received ... and interference." Clearly Leano as well as the present application seek to establish a high quality signal and minimize the common effects of interference or disconnection as well.

Applicant's argument that "even if there is motivation in one of the references (Kumar for example), there must be some reason, suggestion, or motivation found in the prior art

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directing a person of ordinary skill to make the combination.” This argument is unclear. Kumar is prior art and provides motivation as noted above.

Examiner therefore maintains all previous rejections regarding claims 1-42.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan A Sloan whose telephone number is (703)305-8143. The examiner can normally be reached on Mon-Fri 7:30am - 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (703)305-4795. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-4700.

NAS


JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600